

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Maskina Communications, Inc.	)	
	)	CC Docket No. 96-45
Appeal of Decision of the Universal Service	)	
Administrative Company and Request for	)	
Waiver	)	
_____	)	

**IN THE MATTER OF REQUEST FOR REVIEW BY MASKINA COMMUNICATIONS,  
INC. OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR**

Maskina Communications, Inc. ("Maskina"),<sup>1</sup> through its undersigned counsel and pursuant to sections 1.3 and 54.719 through 54.722 of the Federal Communications Commission's ("Commission") rules, 47 C.F.R. §§ 1.3, 54.719-54.722, respectfully appeals the Universal Service Administrative Company's ("USAC") "Administrator's Decision on Contributor Appeal" denying Maskina's appeal of a July 20, 2007 invoice for its universal service fund contribution.<sup>2</sup> The July 20, 2007 invoice was based on an erroneous Form 499-Q filed by Maskina in May 2007. Maskina late-filed a corrected May 2007 FCC Form 499Q but that corrected filing was later rejected by USAC and is currently the subject of a pending appeal

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<sup>1</sup> Maskina's Form 499 filer ID is 822852.

<sup>2</sup> See Letter to Danny E. Adams and Jennifer Kashatus, Kelley Drye & Warren LLP, Counsel to Maskina Communications, Inc., from USAC, RE: Maskina Communications, Inc. Letter of Appeal dated September 25, 2007 (Nov. 28, 2007) (hereinafter "USAC Appeal Rejection Letter") (attached as Exhibit 1). By letter of appeal dated September 25, 2007, out of an abundance of caution, having not yet received a rejection of its revised May 2007 FCC Form 499Q, Maskina filed a letter of appeal of USAC's billing statement to Maskina, dated July 20, 2007, Invoice Number UBDI0000257417, which was based off of the original May 2007 FCC Form 499Q.

before the Commission.<sup>3</sup> The Commission's decision on that appeal could moot the July 20, 2007 invoice and related Administrator's Decision. Accordingly, Maskina hereby requests the Commission reverse USAC's denial of Maskina's appeal of the July 20, 2007 invoice and prohibit USAC from imposing late fees on the disputed amounts pending appeal of those amounts. Failure to grant these requests will impose unnecessary and undue financial hardship on Maskina.

## **I. BACKGROUND**

In May 2007, Maskina timely filed its May 2007 FCC Form 499Q. That filing, which had been prepared by Maskina's agent, TCS Compliance Systems ("TCS"), erroneously reported Maskina's projected end user revenue. Specifically, in the filing, TCS listed revenue that should have been characterized as revenue provided to other universal service contributors (carrier's carrier revenue) (line 119) as end-user revenue (line 120). Maskina mistakenly included the same dollar amounts in both lines 119 and 120 instead of separating out its projected end user revenue and its projected carrier's carrier revenue. As a result of this reporting error, Maskina appeared to owe USF contributions on a substantially larger contribution base, because it included both end user and carrier's carrier revenues. **\*\*\*BEGIN CONFIDENTIAL\*\*\***

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<sup>3</sup> See *Appeal of Decision of the Universal Service Administrative Company and Request for Waiver*, CC Docket No. 96-45 (filed Nov. 2, 2007) ("Corrected Form 499Q Appeal and Waiver Request") (attached as Exhibit 2).

\*\*\*END CONFIDENTIAL\*\*\*

After discovering the error, Maskina made a corrected May 2007 FCC Form 499Q filing on July 24, 2007.<sup>4</sup> On October 15, 2007, USAC notified Maskina by letter that it had rejected Maskina's corrected May 2007 FCC Form 499Q, because Maskina filed the form after the close of the forty-five day correction window.<sup>5</sup> An appeal of USAC's rejection of the corrected filing is currently pending before the Commission.<sup>6</sup>

By invoice dated July 20, 2007, USAC notified Maskina that it was required to contribute \*\*\*BEGIN CONFIDENTIAL

\*\*\*END CONFIDENTIAL\*\*\* that Maskina would usually contribute. On September 25, 2007, Maskina filed with USAC an appeal of the July 20, 2007 USAC invoice on the grounds that the invoice was based on incorrectly reported revenues.<sup>7</sup> Maskina informed USAC that it lacked the cashflow necessary to remit the invoiced amount and that obtaining funding to pay the invoiced amount would result in undue hardship and therefore sought to have the July 20, 2007 invoice rescinded.<sup>8</sup> USAC has continued to issue invoices to Maskina based on the erroneous May 2007 FCC Form 499Q<sup>9</sup> and on November 28, 2007, issued a decision denying that appeal.

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<sup>4</sup> See Maskina's Corrected May 2007 FCC Form 499Q (attached as Exhibit 3).

<sup>5</sup> See Exhibit 1: USAC Appeal Rejection Letter.

<sup>6</sup> See Exhibit 2: Corrected Form 499Q Appeal and Waiver Request.

<sup>7</sup> See *Letter to USAC from Danny E. Adams and Jennifer Kashatus, Kelley Drye & Warren LLP, Counsel to Maskina Communications Inc.* (Sep. 25, 2007) ("July 20 Invoice Appeal") (attached as Exhibit 4).

<sup>8</sup> See Exhibit 4: July 20 Invoice Appeal.

<sup>9</sup> See e.g., USAC Statement of Account, Invoice No. UBDI0000269123 (dated Sep. 21, 2007) (attached as Exhibit 5).

**II. THE FCC SHOULD REVERSE USAC'S DECISION PENDING A RULING ON MASKINA'S CURRENTLY PENDING CORRECTED FORM 499Q APPEAL AND WAIVER REQUEST**

Maskina respectfully appeals USAC's decision denying Maskina's appeal of the July 20, 2007 universal service fund contribution invoice. The Commission should bar USAC's repeated issuance of invoices and attempts to collect USF contributions which are knowingly based on inaccurate information by reversing or staying the USAC Administrator's Decision. USAC refused to accept Maskina's revised May 2007 Form 499Q filing, thereby resulting in the invoices based on the inaccurate May 2007 Form 499Q information. Requiring Maskina to borrow funds to pay the invoiced contribution amounts would cause the company undue hardship and would be unfair in light of the fact that USAC was informed that the invoices are based on erroneous information. Maskina has sought waiver from the Commission of the prior May 2007 Form 499Q revision filing deadline and that waiver request is still pending. Because the Commission's ruling on the waiver request has the potential to moot the USAC Administrator's decision on the July 20, 2007 invoice, the Commission should reverse or stay the decision until the Commission rules on the waiver request. By reversing or staying the USAC decision, the Commission will preserve Maskina's resources, thereby ensuring its continued operations.

Further, Maskina requests USAC be prohibited from imposing late fees on the unpaid disputed amounts at issue. Despite its awareness that the universal service fund contribution amount assessed to Maskina and currently outstanding is based on erroneous information, USAC continues to assess late fees. Maskina has paid a portion of the late fees which appeared to be attributable to Maskina's FCC Form 499-A filing. Maskina respectfully requests that USAC be required to remove the current late payment charges and cease assessing any future late payment charges while the dispute discussed above remains pending before the

Commission. Since the unpaid balance remains in dispute, Maskina asserts that the balance is not due and owing at this time and therefore, USAC has no basis for assessing late payment fees while the disputes remain pending.

The Commission has the authority to grant appeals of USAC decisions<sup>10</sup> and should do so in this case. In granting such appeals, the Commission typically considers a variety of factors including whether the decision being appealed will cause undue hardship to the petitioner. For example, in response to a request for review of a USAC decision denying a filing deadline, the Commission noted that the denial of funding that would result from the USAC decision “would inflict undue hardship” on the petitioner.<sup>11</sup> The Commission relied, in part, upon a similar finding of hardship in granting another review request and also waived compliance with the appeal filing deadline which the petitioner had missed.<sup>12</sup> In a single decision in 2006, the Commission granted 196 appeals of USAC decisions denying E-Rate program funding because the petitioners had missed filing deadlines or made incomplete filings.<sup>13</sup> While the Commission noted that its decision was necessary to promote the goals of Section 254 of the Act and did not apply generally to other Commission rules,<sup>14</sup> the underlying

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<sup>10</sup> 47 C.F.R. § 54.724 (stating, “[t]he Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it.”).

<sup>11</sup> *Request for Review of the Decision of the Universal Service Administrator by Scott County School System Huntsville, Tennessee; Schools and Libraries Universal Service Support Mechanism*, 21 FCC Rcd 10104 (2006).

<sup>12</sup> *Request for Review of the Decision of the Universal Service Administrator by friendship House Scranton, Pennsylvania; Schools and Libraries Universal Service Support Mechanism*, 21 FCC Rcd 14146, ¶¶ 8-9.

<sup>13</sup> *In re Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School New Orleans, LA, et al.; Schools and Libraries Universal Service Support Mechanism*, 21 FCC Rcd 5316 (2006).

<sup>14</sup> *Id.*, ¶9.

**\*\*\*REDACTED FOR PUBLIC INSPECTION\*\*\***

reason for the Commission's grant – the need to prevent undue hardship – is just as relevant in the instant case.

Maskina will suffer undue hardship if the Commission does not reverse or stay USAC's decision and instead requires Maskina to pay the July 20, 2007 universal service contribution invoice. The invoice that USAC submitted to Maskina based on information contained in Maskina's erroneous May 2007 FCC Form 499Q is more than **\*\*\*BEGIN CONFIDENTIAL\*\*\***

**\*\*\*END CONFIDENTIAL\*\*\***

Based on Maskina's projected end user revenues, Maskina's universal service contributions for the entire year would be approximately **\*\*\*BEGIN CONFIDENTIAL\*\*\***

**\*\*\*END**

**CONFIDENTIAL\*\*\*** Maskina does not have the cash flow to remit the invoiced amount, and requiring Maskina to obtain funding to cover the invoiced amount would cause undue hardship and unnecessarily affect Maskina's operations to its end user customers. Moreover, even if

Maskina were able to submit payment to USAC, it is unduly harsh to require Maskina to do so knowing that the billed amount is in error and to require Maskina to wait nearly a full year until it is able to file the FCC Form 499A, which would reflect the actual amounts collected for the entire year.

Granting Maskina's appeal of the USAC Administrator's Decision will serve the public interest and will prevent undue hardship to the Company. The public interest would not be served by requiring Maskina to contribute 30 times more than it actually owes to the universal service fund, only to wait nearly a year to have it refunded. Furthermore, requiring Maskina to pay the USAC invoice would inflict undue hardship as Maskina lacks the cashflow to make the invoiced payment. Granting the appeal would not undermine the universal service fund as Maskina still will contribute to the universal service fund on the basis of its end user revenue.

### III. CONCLUSION

Maskina respectfully requests that the Commission reverse or stay the USAC Administrator's Decision pending the Commission's decision on Maskina's related waiver request and prohibit USAC from applying late fees to the outstanding disputed amounts.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Denise N. Smith", is written over a horizontal line.

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Denise N. Smith  
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December 21, 2007

# **EXHIBIT 1**

**Redacted**



# **EXHIBIT 2**

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...  
Maskina Communications  
...and Thank You for Your Comments**

**Your Confirmation Number is: '2007112335078 '**

**Date Received: Nov 2 2007**

**Docket: 96-45**

**Number of Files Transmitted: 1**

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*updated 12/11/03*

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FEDERAL COMMUNICATIONS COMMISSION  
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ORIGINAL

In the Matter of	)	
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Maskina Communications, Inc.	)	
	)	CC Docket No. 96-45
Appeal of Decision of the Universal Service	)	
Administrative Company and Request for	)	
Waiver	)	
_____	)	

**APPEAL OF DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE  
COMPANY AND REQUEST FOR WAIVER**

Maskina Communications, Inc. ("Maskina"),<sup>1</sup> through its undersigned counsel and pursuant to sections 1.3 and 54.719 through 54.722 of the Federal Communications Commission's ("Commission") rules, 47 C.F.R. §§ 1.3, 54.719-54.722, respectfully appeals the Universal Service Administrative Company's ("USAC") rejection of Maskina's late-filed corrected May 2007 FCC Form 499Q and requests that the Commission waive the forty-five day deadline for correcting the May 2007 FCC Form 499Q.<sup>2</sup> Failure to grant this request will impose unnecessary and undue financial hardship on Maskina.

**I. BACKGROUND**

Maskina timely filed its May 2007 FCC Form 499Q. In that filing, however, Maskina's agent, TCS Compliance Systems ("TCS"), which prepared the filing, erroneously reported Maskina's projected end user revenue. Specifically, in the filing, TCS listed revenue

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<sup>1</sup> Maskina's filer ID is 822852.

<sup>2</sup> See Letter to Kellee Wamble, Maskina Communications, Inc. from USAC, RE: May 2007 FCC Form 499-Q Revision Rejection (Oct. 15, 2007) (hereinafter "Rejection Letter") (attached as Exhibit 1). By letter of appeal dated September 25, 2007, out of an abundance of caution, having not yet received a rejection of its revised May 2007 FCC Form 499Q, Maskina filed a letter of appeal of USAC's billing statement to Maskina, dated July 20, 2007, Invoice Number UBDI0000257417, which was based off of the original May 2007 FCC Form 499Q.

**\*\*\*REDACTED\*\*\***

that should have been characterized as revenue provided to other universal service contributors (carrier's carrier revenue) (line 119) as end-user revenue (line 120). Instead of separating out its projected end user revenue and its protected carrier's carrier revenue, Maskina included the same dollar amounts in both lines 119 and 120. This reporting error caused Maskina to appear to owe USF contributions on a substantially larger contribution base, because it included both end user and carrier's carrier revenues. **\*\*\*BEGIN CONFIDENTIAL\*\*\***

**\*\*\*END CONFIDENTIAL\*\*\***

On July 13, 2007, USAC contacted Maskina with questions regarding its FCC Form 499s. In preparing to respond to USAC's inquiry, Maskina reviewed its filings, including the May 2007 FCC Form 499Q, and discovered the error in the May 2007 FCC Form 499Q. TCS, the entity charged with preparing the 499Q on behalf of Maskina, acknowledges that its system and procedures failed to properly reflect the correct numbers/output for Maskina's May 2007 FCC Form 499Q.

By invoice dated July 20, 2007, USAC mailed an invoice billing Maskina its monthly universal service contribution based on the information contained in the erroneously reported May 2007 FCC Form 499Q. On July 24, 2007, before receiving the July 20 USAC invoice, Maskina filed a corrected May 2007 FCC Form 499Q.<sup>3</sup> On October 15, 2007, USAC

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<sup>3</sup> See Exhibit 2: Maskina's Corrected May 2007 FCC Form 499Q.

notified Maskina by letter that it had rejected Maskina's corrected May 2007 FCC Form 499Q, because Maskina filed the form after the close of the forty-five day correction window.<sup>4</sup>

## **II. THE FCC SHOULD REVERSE USAC'S DECISION AND GRANT A WAIVER OF THE FORTY-FIVE DAY DEADLINE FOR CORRECTING ITS MAY 2007 FCC FORM 499Q**

Maskina respectfully appeals USAC's rejection of Maskina's late-filed May 2007 FCC Form 499Q, and requests that the Commission waive the forty-five day deadline to correct quarterly filings.

The Commission has the authority to waive the forty-five day filing requirement for good cause.<sup>5</sup> In determining whether good cause exists, the Commission has examined if there are special circumstances that warrant deviation from the requirement, and whether granting the waiver will serve the public interest.<sup>6</sup> In *Wait Radio v. FCC*, the court found that a petitioner can demonstrate special circumstances through undue hardship.<sup>7</sup>

The Commission previously has granted waivers of filing deadlines for good cause, and the Commission should do so in this case. As one example, in *APCC Services, Inc. et al. v. Network IP, LLC et al.*, the FCC waived a six-month filing deadline set forth in the FCC's rules, finding that APCC would suffer substantial hardship if the FCC did not waive the deadline.<sup>8</sup> In that case, APCC's counsel made an error, which resulted in the late-filed pleading. The FCC found that if it denied the waiver of the filing deadline, then APCC would be unable to

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<sup>4</sup> See Exhibit 1: Rejection Letter.

<sup>5</sup> 47 C.F.R. § 1.3 (stating, "[t]he provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.").

<sup>6</sup> See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>7</sup> *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>8</sup> *APCC Services, Inc. et al. v. Network IP, LLC, et al.*, 20 FCC Rcd 16727 (2005).

**\*\*\*REDACTED\*\*\***

collect compensation to which it was entitled.<sup>9</sup> On the basis of this substantial hardship, the FCC found that good cause existed to waive the filing deadline.<sup>10</sup>

Similarly, in the present case, good cause exists to waive the forty-five day filing deadline. As was the case in *APCC v. Network IP*, Maskina's filing error was due to an independent consultant, not the filer itself. Maskina did not discover the error until USAC inquired about Maskina's reporting, thus causing Maskina to re-evaluate whether its consultant had completed the May 1 FCC Form 499Q in an accurate manner.

Moreover, Maskina will suffer undue hardship if the Commission does not waive the forty-five day filing deadline. The invoice that USAC submitted to Maskina based on information contained in Maskina's erroneous May 2007 FCC Form 499A is more than

**\*\*\*BEGIN CONFIDENTIAL**

**\*\*\*END CONFIDENTIAL\*\*\***

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

**\*\*\*REDACTED\*\*\***

Based on Maskina's projected end user revenues, Maskina's universal service contributions for the entire year would be approximately **\*\*\*BEGIN CONFIDENTIAL\*\*\***

**\*\*\*END**

**CONFIDENTIAL\*\*\*** Maskina does not have the cash flow to remit the invoiced amount, and requiring Maskina to obtain funding to cover the invoiced amount would cause undue hardship and unnecessarily affect Maskina's operations to its end user customers. Moreover, even if Maskina were able to submit payment to USAC, it is unduly harsh to require Maskina to do so knowing that the billed amount is in error and to require Maskina to wait nearly a full year until it is able to file the FCC Form 499A, which would reflect the actual amounts collected for the entire year.

Granting Maskina's request for waiver will serve the public interest and will not undermine the interests of regulation. The public interest would not be served by requiring Maskina to contribute money to the universal service fund that it does not owe, only to wait nearly a year to have it refunded. Furthermore, granting a one-time waiver of the forty-five day time period in which to correct the filing in no way undermines the universal service fund; Maskina still will contribute to the universal service fund on the basis of its end user revenue.

### III. CONCLUSION

Maskina respectfully requests that USAC reverse its decision to reject Maskina's late-filed corrected May 2007 FCC Form 499Q, and grant Maskina a waiver of the forty-five day deadline in which to correct the May 2007 FCC Form 499Q.

Respectfully submitted,

  
\_\_\_\_\_  
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November 2, 2007



# Exhibit 1

## [Redacted]

# Exhibit 2

## [Redacted]

# **EXHIBIT 3**

**Redacted**

# **EXHIBIT 4**

**Redacted**

# **EXHIBIT 5**

**Redacted**

# **Declaration of Kjetil Bohn**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

My name is Kjetil Bohn, and I am over eighteen years old. I am the President and Chief Executive Officer of Maskina Communications, Inc. My address is 8845 Freeport Parkway, Suite 650, Irving, Texas 75063. I am providing this Declaration in compliance with the requirements of section 1.16 of the Federal Communications Commission's (the "Commission") rules, 47 C.F.R. § 1.16.

Under penalty of perjury, I hereby declare that the following is true and correct to the best of my knowledge and belief:

1. I have been actively involved in communications and filings regarding Maskina Communications, Inc.'s ("Maskina") submission of Form 499A and Form 499Q filings to the Universal Service Administrative Company ("USAC") and the related USAC contribution invoices issued to Maskina.
2. I have reviewed Maskina's Request for Review of Decision of Universal Service Administrator. I have attached documents that are relevant to and in support of the Request for Review.
3. The information and documentation included in the Request for Review are true and correct to the best of my knowledge.

**IN WITNESS WHEREOF**, the above-mentioned corporation has caused this instrument to be executed on its December 18, 2007.

**Maskina Communications, Inc.**

By: \_\_\_\_\_

  
Kjetil Bohn  
President and Chief Executive Officer

**Vyke AS**

Org Number: 982 306 604

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